

Santo Domingo Pueblo (20)

Suggested Approach and Ordinance for Response to Spills and Leaks on Santo Domingo Tribal Lands

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General Ordinance

1989

SUGGESTED APPROACH AND ORDINANCE FOR RESPONSE
TO SPILLS AND LEAKS ON SANTO DOMINGO TRIBAL LANDS
MARK CHANDLER - MAY 1989

A. Approach

1. Benefits Available - In 1986, the Congress Amended the Comprehensive Environmental Response, Compensation and Liability Act (Superfund) to allow treatment of tribes as States for hazardous waste spill response and cleanup purposes. Part of that amendment added an "emergency response and notification requirements" section, also open to tribes.

a. Superfund - The tribe may act as a lead agency in spill response that is Fund-financed (but see "Requirements" below). Alternatively, the tribe may receive funding to defray costs when it acts as a support agency. Either approach requires a cooperative agreement (a "grant") with the EPA, and the tribe does not have to provide a cost share. Further explanation on pre-application assistance is available from the EPA Regional Office. The current contact is Mark Satterwhite, telephone (214) 655-6170.

b. Title III, Emergency Planning and Community Right-to-Know Act -This is not a program like Superfund that EPA runs in the absence of State for tribal assumption. Here, the tribe will be regarded as a State automatically if the tribe does not enter into a cooperative agreement with the State of New Mexico.

Technical assistance is available from the EPA. The current contact Is George Allman (214) 655-2278. Title III funds are available from the Federal Emergency Management Agency (FEMA). Contacts maybe made to the regional FEMA office.

2. Requirements - The response requirements of both Superfund and Title III are varied and complex. Either requires a comprehensive set of regulations and procedures, as well as enforcement capability. An array of equipment (trucks, hoses, protective clothing, fire-fighting equipment and personnel (standing planning and response committees, trained and equipped strike team, etc.).

3. Recommendation -:For the reasons stated in No. 2 above, I believe the tribe needs more

time to consider taking such substantial steps, while not leaving itself open for lack of emergency planning and public notification. Also, there are very good reasons for participating in regional emergency response planning. Therefore, the tribe is encouraged to enter a cooperative agreement with State and local response entities. The agreement may be tailored specifically for the Santo Domingo lands. In furtherance thereof, Part B is a suggested ordinance to accomplish the cooperative agreement.

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B. Suggested Ordinance

WHEREAS, hazardous waste and toxic material spills may occur on railroads and highways traversing tribal lands, and

WHEREAS, such spills will present an imminent and substantial threat to the persons, animals and the environment of the tribe, and

WHEREAS, hazardous waste and toxic material spills require immediate containment and cleanup by a team of trained and properly equipped persons, and

WHEREAS, the tribe does not currently have those resources for immediate response action, and needs some time to consider its options and resources for such responses, and

WHEREAS, the tribe believes that it is to the best interest of itself, its members and its environment to enter into agreements with the State of New Mexico and local emergency response agencies,

NOW, THEREFORE, be it enacted by the Tribal Council, that,

1. The executive branch begin contact and coordination with the contact persons identified in Part A above, for an understanding of how the programs operate, and how the tribe is affected or may be affected,
2. The executive branch further pursue with those contact persons the benefits available to the tribe under Superfund and Title III,
3. The executive branch further pursue with those contact persons the level of resources expected of the tribe should it desire to assume either of the programs, and the level of funding available to the tribe,
4. Concurrently with the above actions, the executive branch shall contact local and State emergency response agencies for the purpose of negotiating and completing a cooperative agreement with the tribe, for spill response and cleanup purposes.

Tribal Council